



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis erbgha (4) ta' Frar 2016

**Rikors Numru 91/13 FDP**

**Alfred Zammit**  
(ID 18870M)

VS

**Louiselle Vassallo**  
(ID 22572M)

Il-Qorti:-

Rat ir-rikors ipprezentat fil 5 ta' April 2013 fejn ir-rikorrent, filwaqt illi ghamel referenza ghar-rappurtagg illi deher fuq l-Ahbarjiet ta' Net News tat-Tnejn 25 ta' Marju 2013, li tieghu l-intimat huwa l-editur, talab lill-Qorti tiddikjara illi tali artikolu kien libelluz u malafamanti fil-konfront tieghu peress illi saru allegazzjonijet foloz u inveritjeri fil-konfront tieghu fejn, fost affarjiet ohra, inghad illi niex kienu rifaccjati mill-*"kugin tal-prezentatur ta' ONE TV Alfred Zammit li fost l-ohrajn qalilhom li issa Malta hija tal-Laburisti biss"* u ghalhekk il-Qorti kellha tikkundanna lill intimat thallsu ghad-danni.

Rat ir-risposta ta' l-intimata ipprezentata fil 25 ta' April 2013 fejn eccepixxa illi l-fatti hemm kontenuti kienu korretti u ghalhekk dak illi inkiteb kien jammonta ghal fair comment.

Rat illi l-provi migbura fil-kawza 'Alfred Zammit vs Alexander Attard, Avviz nru 90/13, gew meqjusa bhala provi migbura fil-kawza odjerna, stante illi jikkunsidraw l-istess fatti.

Semghet ix-xhieda ta' **Alfred Zammit** moghtija fl-1 ta' Lulju 2013 flimkien ma' dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Rita Digbi**, moghtija fil 5 ta' Mejju 2014.

Rat illi fl-24 ta' Ottubru 2014 il-Qorti giet infurmata illi r-rikorrent ma kellhux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Carmelo sive Charles Spiteri**, prodott mill-intimat u moghtija fl-4 ta' Dicembru 2014.

Semghet ix-xhieda ta' **Louiselle Vassallo** moghtija fl-4 ta' Dicembru 2014.

Semghet ix-xhieda ta' **Alexander Attard** moghtija fis 16 ta' Frar 2015.

Rat illi fit 8 ta' Ottubru 2015 l-intimat iddikjara illi ma kellhux aktar provi x'jippresenta.

Sema t-trattazzjoni ta' l-abbli difensuri tal-partijiet moghtija fid 9 ta' Novembru 2015, wara liema data il-kawza giet differita ghas-sentenza.

## **Ikkunsidrat**

Il-kawza odjerna, illi miexja kontestwalment ma' kawza ohra fl-ismijiet '**Alfred Zammit vs Alexander Attard**' Avviz Nru 90/13 FDP li tirrigwarda l-istess meritu, izda din id-darba fuq il-gazzetta In-Nazzjoni tas-26 ta' Marzu 2013, liema kawza qieghda tigi deciza illum flimkien mal-kawza odjerna, tirrigwarda allegazzjonijiet illi saru fil-konfront tar-rikorrent Alfred Zammit.

Jirrizulta, mix-xhieda prodotta mill-intimat, illi fil-news tal 25 ta' Marzu 2013 gie irrappurtat illi l-Hadd 24 ta' Marzu 2013, jigifieri gimghatejn wara l-Elezzjoni Generali tad 9 ta' Marzu 2013, kien hemm incident fejn persuna, illi identifika ruhu bhala il-kugin tal-prezentatur ta' One TV Alfred Zammit, avvicina lill persuna u, fost affarjiet ohra, lill tali persuna allegatament qallu illi "Malta hi tal-Laburisti biss" u illi "kien ilu sitt snin ma jahdem u issa kienu se jaqlighu lill dawk li jahdmu fid-Dipartimenti tal-Gvern u mat-turisti biex minflokhom jdhlu nies Laburisti li issa ilhom hafna jistennew din l-opportunita'".

Jirrizulta illi f'tali rappurtagg, wrew ukoll intervista ma' persuna mhux maghrufa u b'lehinha mibdul, illi kkonferma tali fatti.

Jirrizulta illi ir-rikorrent jikkontendi illi huwa ma ghandu ebda kugin illi b'xi mod seta qal hekk filwaqt illi l-istess rikorrent jishaq illi "jekk verament dan il-persuna, li ma nafx min hu, qal dan il-kliem, qalhom hazin u ghamel hazin qalhom".

## **Ikkunsidrat**

Il-kawza odjerna tippertja ruhha unikament fuq ix-xhieda ta' Carmelo sive Charles Spiteri, illi kien il-persuna illi rrapporta l-incident lill-Kamra tal-Ahbarjiet, liema Kamra tal-Ahbarjiet ghaddew biex jaghmlu storja abbazi taghha, kemm fuq in-NET News, meritu tal-kawza odjerna, kif ukoll fuq il-gazzetta In-Nazzjon, meritu tal-kawza 90/13 FDP miexja kontestwalment mal-kawza odjerna.

Jirrizulta illi fix-xandira gie irrappurtat illi grupp ta' nies kienu faccjati mill-kugin tal-presentatur ta' One TV, Alfred Zammit, li fost affarjiet ohra qalilhom li issa Malta hi tal-Laburisti biss. Il-persuna intervistata qalet illi meta huma kienu qed jistennew biex jirkbu l-privates biex imorru ghall-harga kulturali, mar fuqhom ragel li qalilhom li hu l-kugin ta' Alfred Zammit li jmexxi l-programm Kalamita fuq One TV, u fost kliem hazin u baxx, qalilhom li hu kien ilu sitt snin ma jahdem u issa

kienu se jaqilghu lil dawk li jahdmu fid-Dipartiment tal-Gvern u mat-turisti beix minflokhom jidhlu nies Laboristi li issa ilhom hafna jistennew l-opportunita.

Jirrizulta, skond il-persuna intervistata, illi meta n-nies prezenti gibdulu l-attenzjoni li skond il-Partit Laborista issa Malta hi “Taghna Lkoll” u li l-Labour qal li lest jahdem ma’ kullhadd, dan kompli bl-attakki tieghu u qalilhom li “issa Malta hi tal-Laboristi biss”.

Jirrizulta illi Charles Spiteri, illi kien il-persuna intervistata fix-xandira meritu tal-kawza odjerna, fix-xhieda illi ta’ quddiem dina l-Qorti, pinga sitwazzjoni kemmxejn differenti ta’ tali persuna. Di fatti, fix-xhieda tieghu jghid is-segwent:

*Jiena kelli l-coaches ipparkjati quddiem il-Lukanda Phoenicia gewwa l-Belt. Appena l-coaches bdew jipparkjaw hemm hekk gie fuqi persuna illi jiena nafu peress illi jaghmilha ta’ parker f’ dik iz-zona fejn jipparkjaw il-Buses u avvicinani u qalli “haw Charl!”*

*Dan il-persuna l-ewwel staqsieni ghal sigarett, u ghedtlu m’ ghandix; imbaghad staqsieni ghal flus u jiena ghedtlu dik il-gurnata kienet il-Hadd u jiena ma stajtx intih flus, ma kellix flus fuqi. Imbaghad dan infexx jghajjarni u jghidli issa ‘Malta taghna lkoll, ser inqaxtukom!’, u affarijiet ohra f’ dan il-kuntest.*

*Imbaghad qalli “illi issa nghid lill-kugin tieghi Alfred Zammit biex jaqlakom u jien nidhol ta’ bilfors nahdem hemm hekk.”*

*Jiena pprovajt nikkalmah ghax indunajt illi s-sinjur kellu rieha ta’ xorb fuqu u dan imbaghad meta kkalma ffit beda jghidli li l-fatt li ahna konna qed nipparkjawlu x-xarabanks hemm hekk konna qed ingerxulu n-nies milli jipparkjaw f’ dik iz-zona.*

*Jiena nista’ nghid illi jien dak il-hin meta kien qed ikellimni dan is-sinjur jiena hassejtni mhedded ghax kulhadd kien jaf il-kulur politiku tieghi, ix-xoghol tieghi wkoll, u hassejt illi x-xoghol tieghi kien ser jigi mhedded peress illi dan beda jhedded illi ha jittrasferuni minn l-iktar fiss possibbli.*

Fuq domandi tal-Qorti, tali xhud qal is-segwent:

*Mitlub nghid mill-Qorti x’ jismu l-persuni li lili kellimni u qalli dak il-kliem kollha : nghid illi peress illi dan il-persuna dejjem fis-sakra u dejjem bi glied jiena ma nafx min hu.*

*Qed nigi mitlub nerga’ mill-Qorti biex naghti informazzjoni dwar din il-persuna li kellimni : u nghid illi jiena naf illi l-laqam ta’ din il-persuna huwa maghruf bhala “Tas-Sej”; x’ jismu u x’ kunjomu jiena ma nafx.*

In kontro ezami, tali xhud imbaghad stqarr is-segwent:

*Dan il-persuna li jien qed nindikah bhala ‘Tas-Sej’ kien jaghmilha ta’ parker. Jien din ma kinetx l-ewwel gurnata li rajtu; kont ili narah hemm hekk. Jien nixtieq nghid illi lil dan il-persuna kont narah ta’ spiss hemm hekk, kemm meta jiena kont naqbad tal-linja u eventwalment meta nkun diehel il-Belt narah hemm hekk, u kif ukoll meta ahna konna norganizzaw ix-Xarabanks ghal dawn l-visti kulturali illi konna naghmlu darba fix-*

*xahar. Jiena nixtieq nghid illi ghalkemm kont ili seba' snin norganizza l-coaches tal-visti kulturali nahseb li kien ghal dan l-ahhar sentejn illi jiena kont narah hemm hekk regolarment.*

...

*Jiena naf dan il-persuna ghax narah hemm hekk, u jiena emmint dak li hu kien qed jghid. Jiena mort ghand in-Net Television sabiex naghmel l-intervista tieghi magghom minghajr ma ivverifikajt jekk hux attwalment il-kugin ta' Alfred Zammit u minghajr ma ivverifikajt x' jismu jew x' kunjomu dan il-persuna.*

## **Ikkunsidrat**

Jirrizulta, mill-provi prodotti, illi l-gurnalisti tal-Newroom tan-NET TV, illi taghha hija responsabbli l-intimata bhala editur hargu l-istorja ibbazata unikament fuq ix-xhieda ta' Carmelo Spiteri, liema xhieda ma hijiex daqstant kredibbli, u certament ma giet b'ebda mod korroborata b'xi xhieda ohra, u dana ghalkemm, kif jghid l-istess Spiteri, kien hemm xarabank shih ta' nies hdejh u dawna kollha semghu il-kliem.

Jirrizulta illi l-kredibilita' tax-xhud kienet certament ridotta meta, fuq domanda tal-Qorti, qal is-segwenti:

*Mitlub nghid jekk jiena qatt staqsejtu ismu u kunjomu : nghid illi jiena dana ma staqsejtux. Nghid illi jiena mill-Belt u dan il-persuna huwa mill-Belt ukoll.*

*Mistoqsi mill-Qorti jekk nafx allura ismu : nghid illi le ma nafx x' jismu u ma rridx li nkun naf x' jismu. Jiena nghid illi naf hafna nies li huma hbieb tieghi imma isimhom ma nafhomx.*

Jirrizulta wkoll illi, fix-xhieda tieghu, x-xhud jghid ripetutament illi tali persuna, meta kellmu u qal dawna l-kliem, kien fis-sakra u, bhala persuna, huwa maghruf illi jkun fis-sakra. Tali indikazzjonijiet ma jidhru imsemmija imkien fir-rappurtagg li sar fil-gazzetta In-Nazzjoni u li dwaru hassu malafamat ir-rikorrent.

## **Ikkunsidrat**

Jirrizulta illi d-difiza mqajjma mill-intimata fil-kawza odjerna kienet illi l-kummenti illi saru kienu 'fair comment' fuq fatti sostanzjalment veri illi kienu ta' interess pubbliku u ghalhekk ma setghux jitqiesu bhala malafamanti.

Ikun ghalhekk utili li wiehed jezamina l-principji tad-difiza tal-'fair comment' sabiex wiehed ikun jista jikkunsidra l-fatti kif fuq stabbiliti fl-ottika tal-principji generali tad-difiza tal-'fair comment'.

Dwar tali difiza **Gatley on Libel and Slander** jghid:

*To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or*

*implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.*

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, tali principji gew minnha mhaddna u spjegati kif gej :

*... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehrieg li min jistrieħ fuqha jsehħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajir jew insolenza; u (e) irid jaghti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preciz li jwegga' lil dak li jkun.*

Tali taghlim huwa anke riflessa fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

*... defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.*

Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567, para 43, tghid is-segwenti:

*... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it ."*

Jirrizulta car, ghalhekk, mill-gurisprudenza fuq imressqa, illi hemm sabiex id-difiza ta' 'fair comment' u 'value judgment' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

## **Ikkunsidrat**

Minn ezami tar-rappurtagg illi dwaru ir-rikorrent hassu malafamat w il-provi prodotti quddiem dina l-Qorti, jirrizulta illi l-fatti kollha kif rappurtati ma gewx sostanzjalment ippruvati.

Jirrizulta, di fatti, illi ghalkemm jinghad illi dawna l-kliem intqalu minn persuna li introduca lilluniffsu bhala 'il-kugin ta' Alfred Zammit', prova konkreta illi turi illi attwalment tali persuna kien verament il-kugin ta' Alfred Zammit ma ingabietx.

Jirrizulta illi l-persuna illi ivvintat dina l-istorja kkollha, Carmelo Spiteri, bl-ebda mod ma seta jikkorrobora dak minnu allegat. Mhux talli ma kkorrobora xejn, talli, ghalkemm huwa jghix gewwa l-Belt Valletta, li hija belt li ghandha anqas minn 7,000 ruh jghixu fiha ufficjalment, u ghalkemm tali persuna illi huwa raha, kien jaraha regolarment, huwa ma kienx kapaci jaghti isem u kunjom lill tali persuna, ghajr illi jghid illi jafu bil-laqam 'tas-sej', li ma tantx jaghti indikazzjoni dwar il-parentela o meno tieghu mar-rikorrent.

Jirrizulta wkoll illi l-persuna illi rrapurtat l-istorja naqqset minn wahda mill-obbligi bazilari tal-gurnalizmu, ossija dik ta' investigazzjoni tal-kaz, u dana in vista tal-fatt illi tali gurnalist naqas milli jaghmel kwalsiasi verifika dwar il-fatti kif iddikjarati minn Spiteri u lanqas biss ma kkomunika mar-rikorrent qabel ma attwalment irrapporta l-istorja.

Dana il-principju huwa bbazat fuq dan enuncat fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil 21 ta' Ottubru 2014, fejn intqal is-segwent:

*62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism. Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities" that also apply to the media, even with respect to matters of serious public concern. Those "duties and responsibilities" are significant when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.*

Fil-kaz odjern, kien obbligu tal-gurnalist illi jassikura ruhu li, la darba ma kienu jesistu ebda ragunijiet specjali ghaliex ma jaghmilx il-verifiki necessarji, jaghmel dak l-isforz mehtieg sabiex mhux biss jirrapporta storja, izda jasskura illi tkun "reliable and precise" kemm jista jkun – x'kien hemm ahjar milli jikkomunika mar-rikorrent qabel ma jippubblika l-istorja. Kieku l-gurnalist indenja ruhu jikkomunika mar-rikorrent, seta jkun rappurtat illi r-rikorrent kien qieghed jikkontesta l-veracita' tal-fatti, u il-qarrej kien jinghata stampa kompleta tal-fatti. Fil-kaz odjern, madanakollu, tali nuqqas wassal illi l-qarrej ordinarju inghata stampa inkompleta tal-fatti, liema stampa spiccat biex setghet tirreka dannu lejn ir-reputazzjoni tar-rikorrent, liema reputazzjoni attwalment spiccat imtappna minhabba fi storja mhux korroborata ta' persuna, Carmelo Spiteri, illi ltaqa' ma persuna mill-belt tieghu stess, li huwa maghruf li jkun fis-sakra, u li ma jafx ismu!

Ghalhekk, il-kaz tar-rikorrent jirrizulta ben fondat.

## **Konkluzjoni**

Wara illi rat il-provi kollha prodotti quddiemha u wara illi semghet is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tichad** l-eccezzjonijiet kollha ta' l-intimat,

**Tilqa** it-talbiet attrici.

**Tiddikjara** l-ahbarjiet imxandra fuq NET TV fit Tnejn, 25 ta' Marzu 2013, fejn issemma ir-rikorrent kienu malafamanti u ingurjuz fil-konfront tieghu u

**Tikkundanna**, a tenur ta' l-Artikolu 28 tal-Kap 248, lill-intimata thallas lir-rikorrent is-somma ta' elf u hames mitt Euro (€1,500), in linea ta' danni

Spejjez tal-proceduri kollha u imghax mid-data tas-sentenza sad-data tal-pagament effettiv ikunu a kariku ta' l-intimata.

**Magistrat Francesco Depasquale**

**Marisa Bugeja**  
Deputat Registratur